

Take Notice: New Jersey Appellate Division Clarifies Land Use Notice Requirements

February 19, 2019

As many property developers in New Jersey are aware, due to jurisdictional requirements, proper notice of a land use application hearing is a crucial part of obtaining development approval. If your hearing notice is legally deficient for any reason, then any approval you obtain is void, no matter how strong the merits of your application are. N.J.S.A. 40:55D-12.

The law governing land use notice requirements in New Jersey can be murky, but some general principles are clear. Notices must fairly apprise the general public of the nature and character of proposed development in a common sense fashion that alerts an ordinary layperson to whether or not they should seek additional information and attend the hearing to participate in the proceedings. Just recently in Lakewood Realty Assocs. v. Lakewood Planning Bd., 2019 N.J. Super. Unpub. LEXIS 287 (App. Div. 2019), the New Jersey Appellate Division provided further clarity in what the notices must specify.

The case involved a property developer that filed a land use application to construct a bank and hotel – which were permitted uses in the relevant zone – in Lakewood, New Jersey. The Lakewood planning board unanimously voted to approve the development project over the complaints of an objector that appeared at the hearing. The objector challenged the approval in court and a trial judge upheld the approval. The objector thereafter appealed the trial court's order.

The Appellate Division reversed and vacated the approval because, in part, the applicant's land use notices were not specific enough in detailing the proposed use of the property in question, even though the uses described in the notice were permitted under Lakewood zoning regulations. Specifically, the court observed that the applicant's notices failed to mention that the proposed hotel would include a bar, restaurant, and banquet facilities and held that by failing to mention these amenities, the notices did not fairly apprise the public of the nature and character of the proposed development. The appellate panel was not persuaded by the applicant's argument that the notice adequately described the proposed use because hotels often include bars, restaurants, and banquet facilities. The court relied on prior decisions invalidating land use approvals because the public notices were not specific enough in describing the proposed uses: one case involved a notice that described a commercial development but did not mention that the proposed commercial use was a shopping center; another case involved notice that described the proposed use a mix of residential, retail, and office units, but did not mention that a restaurant and liquor license were contemplated.

The takeaway from Lakewood Realty Assocs. and the cases it relied on is that land use notices should specifically describe and adequately apprise the public of the character and intensity of the planned use of proposed development, even if the use is permitted under land use

regulations. **Land use applicants should be wary about relying on the form of notices that are often supplied by municipalities in their relevant application packages,** and are encouraged to consult an attorney when applying for development approvals.